

REMARKS/ARGUMENTS

Upon entry of this amendment, claims 20, 21, 28-35, 37, 41, 42 and 46 are pending in the application. Claim 34 has been amended. Claim 36, 38-40, 43-45 and 47-49 have been canceled without prejudice. The Applicants reserve the right to prosecute these canceled claims in a divisional or continuation application. Entry of the amendment, reconsideration of the rejection, and allowance of claims 20, 21, 28-35, 37, 41, 42 and 46 are respectfully requested.

The Amendment

In order to expedite prosecution of the application and advance the case toward allowance, the claims have been amended. No new matter was added by the amendment.

The specification has been amended to correct for minor informalities.

Claim 34 has been amended to specify that the exogenous protein is a pharmaceutical protein. Support for this amendment is found on page 30, line 30, of the specification and in canceled claim 36.

Rejection Under 35 U.S.C. §102

Claims 20-21, 28-37, 41-42 and 46 are rejected under 35 U.S.C. §102(e) as being allegedly anticipated by Speksnijder *et al.* (U.S. Patent No. 5,897,998).

The Examiner has indicated that the rejection might be overcome by a showing under 37 C.F.R. §1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus, not the invention "by another," or by an appropriate showing under 37 CFR §1.131. According to the Office Action, the scope of the invention as claimed encompasses a chicken egg containing an exogenous protein in the egg white.

The rejection is respectfully traversed.

MPEP 2136.05 states as follows:

"When the reference reflects applicant's own work, applicant need not prove diligence or reduction to practice to establish that he or she invented the subject

matter disclosed in the reference. **A showing that the reference disclosure arose from applicant's work coupled with a showing of conception by the applicant before the filing date of the reference will overcome the 35 U.S.C. 102(e) rejection.** The showing can be made by submission of an affidavit by the inventor under 37 CFR 1.132. The other patentees need not submit an affidavit disclaiming inventorship, but, if submitted, a disclaimer by all other patentees should be considered by the examiner. *In re DeBaun*, 687 F.2d 459, 214 USPQ 933 (CCPA 1982) (Declaration submitted by DeBaun stated that he was the inventor of subject matter disclosed in the U.S. patent reference of DeBaun and Noll. Exhibits were attached to the declaration showing conception and included drawings DeBaun had prepared and given to counsel for purposes of preparing the application which issued as the reference patent. The court held that, even though the evidence was not sufficient to antedate the prior art patent under 37 CFR 1.131, diligence and/or reduction to practice was not required to show DeBaun invented the subject matter. **Declarant's statement that he conceived the invention first was enough to overcome the 35 U.S.C. 102(e) rejection.**.)" [Emphasis added.]

Accordingly, attached to this response is a declaration under 37 CFR §1.132 by Dr. Robert D. Ivarie, showing that an avian egg containing exogenous protein in egg white was derived from the inventor of this application. As such, the rejection should be moot.

Claims 34-37 are rejected under 35 U.S.C. §102(b) as being allegedly anticipated by Boldt (U.S. Patent No. 4,296,134).

According to the Office Action, Boldt teaches an egg product that comprises chicken egg white blended with milk proteins (NFDM) and soy proteins; and NFDM naturally contains lactoferrin, which displays anti-microbial activity against various pathogens. The cited art allegedly anticipates chicken egg white comprising exogenous protein.

To the extent that the rejection applies to the claims as amended, the rejection is respectfully traversed.

The claims have been amended to specify that the egg white comprises a protein exogenous to the egg white, wherein the protein is a pharmaceutical protein. Boldt does not teach or disclose an egg white that contains a pharmaceutical protein. Thus, this rejection should be withdrawn.

Rejection Under 35 U.S.C. §103

Claim 29 is rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Speksnijder *et al.* (U.S. Patent No. 5,897,998; 1999) as applied to claims 20-21, 28-37, 41-42 and 46 above, and further in view of Sekellick *et al.* (U.S. Patent No. 5,885,567, 1999).

The Examiner indicates that it would have been obvious to one of skill to modify the invention by Speksnijder *et al.* by substituting a cytokine with interferon in view of Sekellick *et al.*

The rejection is respectfully traversed.

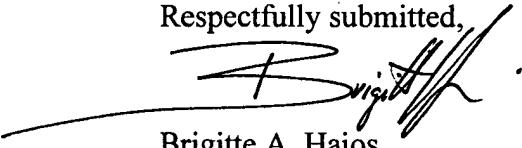
As indicated above, a declaration under 37 CFR §1.132 by Dr. Robert D. Ivarie has been submitted in order to overcome the rejection of Speksnijder *et al.* As such, Speksnijder *et al.* is no longer available as a reference to combine with Sekellick *et al.* Thus, the rejection should be withdrawn.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 415-576-0200.

Respectfully submitted,


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Attachments